

IN THE SENATE OF THE UNITED STATES.

JUNE 11, 1860.—Ordered to be printed.

Mr. SLIDELL submitted the following

REPORT.

*The Committee on Naval Affairs, to whom was referred the memorial of William Maxwell Wood, a surgeon in the navy of the United States, have had the same under consideration, and thereupon report:*

The memorialist was the fleet surgeon of the East Indian squadron, on duty in the China seas, on board the flag-ship San Jacinto, in 1857, when he received from the flag-officer commanding the squadron this order:

UNITED STATES FLAG-SHIP SAN JACINTO,  
*Hong Kong, December 29, 1857.*

SIR: Having received orders to return to the United States by the overland route, I do not feel competent to do so in my failing health, without a medical attendant; you will, therefore, transfer the medical charge of this ship, by the 12th January, 1859, to the senior assistant surgeon, and prepare to accompany me by the next steamer.

I am, very respectfully, your obedient servant,

JAMES ARMSTRONG,  
*Flag-Officer, Commanding U. S. Naval Forces,  
East Indian and China Seas.*

Fleet Surgeon WM. MAXWELL WOOD, *Hong Kong.*

Subsequently, he received this further order:

UNITED STATES FLAG-SHIP SAN JACINTO,  
*January 29, 1858.*

SIR: You will proceed with me, by the overland route, *via* England, to New York, and, upon your arrival at New York, you will report yourself, by letter, to the honorable Secretary of the Navy.

I am, very respectfully, your obedient servant,

JAMES ARMSTRONG,  
*Flag-Officer, Commanding U. S. Naval Forces,  
East Indian and China Seas.*

Fleet Surgeon WM. MAXWELL WOOD.

The memorialist obeyed the orders and came home, the flag-officer paying his expenses. The memorialist applied to the department to be allowed these expenses, in order to repay Flag-officer Armstrong, and the department declined to grant them, and he appeals to Congress for relief.

The following correspondence presents the grounds of the department's action:

No. 1.

*Letter of Hon. Secretary of the Navy to Commodore Armstrong.*

NAVY DEPARTMENT, August 2, 1858.

SIR: The department has received your letter of the 27th ultimo, in relation to the traveling expenses of Surgeon Wood.

The surgeon of a vessel is not ordered for the personal convenience of any officer, and the department, in detailing medical officers, is the judge of what the requirements of a vessel are in this respect. The fleet surgeon is by law appointed by the President, through the Secretary of the Navy, and there is no power in the commander of a squadron, of his own volition, to change the order.

I am, very, respectfully, &c.,

ISAAC TOUCEY.

Commodore JAMES ARMSTRONG,  
*United States Navy, Charlestown, Massachusetts.*

No. 2.

*Letter of Commodore Armstrong, in reply.*

CHARLESTOWN, MASS., August, 1858.

SIR: I have the honor to acknowledge the receipt of your letter of the 2d instant.

It is with great reluctance I find myself compelled to dissent from any views of the department, and I do so respectfully and with hesitation.

It is my misfortune, in this case, to differ as to the merits of a decision, with the authority which claims the power to make that decision; yet I have every confidence in the intention to do justice, and duty to my official position requires me to place my views upon record.

I admit that the "surgeon of a vessel is not ordered for the personal convenience of any officer." I beg leave, however, to suggest that every officer has been considered entitled to medical care and attention in his diseases and infirmities—certainly in those incident to duty and threatening his existence. It is a frequent practice to detail a medical officer to take charge of wounded seamen on their journey from a foreign station to their homes; and I

had no reason to suspect that this privilege, if not right, would be denied to officer who labored under the wear of nearly half a century's approved service, and whose life was threatened by the effects of a prostrating climate and anxious duties, especially as I had warned the department of my inability to travel by the overland route. The fact that the fleet surgeon to relieve Surgeon Wood was then on his way out, was one among the circumstances which seemed to justify the exercise of what I considered the proper authority of my command.

That "the department, in detailing medical officers, is the judge of what the requirements of a vessel are in this respect," I do not doubt. The same principle applies to the detail of all officers; yet the power of changing the duties of those officers on foreign stations, and of ordering them home, according to the requirement of circumstances, is one of the principal incidents and necessities of foreign command. It may, as all other powers, be exercised in error of judgment, and be subject to reproof and censure from those who differ with the judgment; but I need scarcely call the attention of the department to the consequences of making the means of carrying out the legal order of a competent authority depend upon a subsequent though superior judgment as to its expediency and propriety.

If this power is suspended as regards the fleet surgeon, because he "is by law appointed by the President, through the Secretary of the Navy," it would, unless I greatly err, lead to the inference, that the fleet surgeon would be independent of the commanding officer, and could not be suspended from his duties for conduct meriting suspension.

From this view, presented by the department, I trust there will be no disrespect in my asking permission to respectfully state the case, and make an appeal to the President of the United States, should the department not see in the circumstances and impressions under which I acted, a reason for a more favorable consideration of the case.

Very respectfully, your obedient servant,

JAS. ARMSTRONG,

*Captain United States Navy.*

Hon. ISAAC TOUCEY,  
*Secretary of the Navy.*

No acknowledgment of this letter was made by the department.

---

No. 3.

*Letter of Fourth Auditor, in reply to an application of Surgeon Wood, for the difference between "leave-of-absence" and duty pay while acting under the orders of Commodore Armstrong.*

TREASURY DEPARTMENT,  
*Fourth Auditor's Office, August 5, 1858.*

SIR: Your letter of the 2d instant was received on the 4th, and referred to the Secretary of the Navy, who has returned it with the following indorsement: "I think Dr. Wood was not on duty accom-

panying Commodore Armstrong on his way home, and can only receive leave-of-absence pay."

I am, sir, respectfully, your obedient servant,

A. O. DAYTON.

Surgeon WILLIAM MAXWELL WOOD,  
United States Navy, Erie, Pennsylvania.

No. 4.

*Letter of Surgeon Wood in reply to the Fourth Auditor.*

ERIE, August 9, 1858.

SIR: I have the honor to acknowledge the receipt of your letter of the 5th instant.

I am not a little surprised that the Secretary of the Navy "thinks" that I "was not on duty accompanying Commodore Armstrong on his way home." The language of the Secretary of the Navy seems to indicate a doubtful opinion, but I infer that you regard it as sufficient to guide your action, as you have said nothing to the contrary. I have been under the perhaps erroneous impression that you were the judge of the law in such a case; and though your decisions have not always accorded with my interests, I have that confidence in your justice, and your familiarity with naval laws, as would lead me to hesitate much in advancing any claim against your opinion of its propriety.

You will admit that I cannot be expected to yield substantial rights to a doubtfully expressed individual, though highly official, opinion.

I know that I was on duty, in fact, and an anxious and responsible duty, and I believe that I have the legal evidence of the fact.

Under two definite orders of the commander-in-chief of the squadron to which I was attached, I was ordered from the duty to which I was appointed by the President of the United States, to other and specific duties. I performed them; had no control of my own movements; was under military command; and in obedience to that command reported to the Secretary of the Navy. In this there was nothing like "leave of absence." I asked no leave of absence, and had none—was in no-wise in the position to which the law assigns "leave of absence" or "waiting orders" compensation.

That the whole spirit and purport of the law gives me duty pay, I think none can deny; and if there is any word or quibble, by which this spirit can be evaded, I do not see it, and am sure that no functionary of the Navy Department would condescend to such an evasion.

The orders, of which you have copies, I dare not disobey without a violation of my official oath, being guilty of a grave military offense, and risking the loss of my commission.

If the commander-in-chief had no power to give me these orders, I am not justly amenable for his error of judgment, and I remain officially in the position of surgeon of the fleet to which I was appointed by the President of the United States, until I reported to the Secretary of the Navy.

If, after this statement of facts, and my view of them, you cannot recognize my claim, I will thank you to indicate to me the series of executive authorities to which I can in courteous and respectful order appeal.

Very respectfully, your obedient servant,

WM. MAXWELL WOOD.

A. O. DAYTON, Esq.,

*Fourth Auditor, Washington, D. C.*

No. 5.

*Letter of Fourth Auditor.*

TREASURY DEPARTMENT,

*Fourth Auditor's Office, August 13, 1858.*

SIR: I have received your letter of the 9th instant, in which I understand you to contend, 1st, that the Secretary of the Navy has expressed only a doubtful opinion as to your right to duty pay while on your late return from Hong Kong; 2d, that his opinion is incorrect; and, 3d, that this office ought not to be governed by it. To remove your first objection, I presume it is only necessary to transcribe my reference and the Secretary's answer. The reference was in these words: "Respectfully referred to the Secretary of the Navy for his decision as to the rate of pay which Surgeon Wood shall be allowed for the time during which he was on his return from the East India squadron, under the within order from Commodore Armstrong." The answer was as follows: "I think Dr. Wood was not on duty accompanying Commodore Armstrong on his way home, and can only receive leave-of-absence-pay." What is there doubtful about this? Is it that the Secretary uses the expression "I think," and does not say that he is sure. But to *think* and to be *of opinion* have the same meaning, and if one of our civil tribunals should say, "The court is of opinion that the plaintiff is entitled to recover," would the case be considered as determined? It seems to me that the answer of the Secretary is not doubtful, but absolute.

What you have said about the incorrectness of the opinion would have been addressed with more pertinency, as I think you will admit, to the Secretary himself, since he can change it, and this office cannot.

While I entertain great respect for your views upon the subject, I cannot but think that the question was within the legitimate province of the Secretary, and this office is bound by his decision. If you were on duty during the period in question you were entitled *by law* to duty pay. But who is to decide whether you were on duty? Most certainly the department to which you belong. It would be strange, indeed, if an officer attached to the civil branch of the service should attempt to overrule a military department upon a question whether one of its officers was on military duty. The accounting officers of the treasury may very properly determine that a naval officer *when on duty* is entitled to certain compensation, but they have no right to in-

sist that a certain individual was on duty when the Navy Department informs them that he was not. They cannot lawfully determine that you were on duty when accompanying Commodore Armstrong from Hong Kong to the United States, in opposition to the opinion of the head of the Navy Department that such was not the case.

You ask me to what authority you can appeal from the decision of the Secretary, of which you complain. I answer that I am not aware of any, short of Congress.

I am, sir, very respectfully, your obedient servant,

A. O. DAYTON.

To Surgeon WM. MAXWELL WOOD,

*United States Navy, Erie, Pennsylvania.*

---

It is evident that Flag-officer Armstrong, in ordering the surgeon of the fleet to abandon the highly important and responsible duties to which the President had assigned him in the East India squadron, and to accompany him to the United States solely and exclusively for his, the flag-officer's, individual convenience, consulted rather his personal wishes than his own duties, or those of Surgeon Wood, to his command, or the orders of his superior.

The excuse of depriving the squadron of its chief surgeon, the highest in rank, and presumptively, the most experienced of his corps in the fleet, is that he did not feel competent to return to the United States by the overland route without a medical attendant. Of this, he was of course the best judge; but if any other medical attendant than such as are on duty in nearly all passenger steamers on the overland route from China, *via* England, to the United States were deemed necessary, it was not necessary certainly that the *fleet surgeon* should be selected.

Surgeon Wood obeyed the order to abandon his post and come to the United States. The flag-officer took him from the duties of surgeon of the fleet to which the President of the United States had specially appointed him, made him his traveling physician for his special personal convenience, and paid his traveling expenses home. The memorialist asks to be paid, as he alleges, that he may pay them back to Armstrong.

The committee recommend the adoption of the following resolution:  
*Resolved*, That the prayer of the petitioner be rejected.





